

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:04-CR-211-1-BO

UNITED STATES OF AMERICA

v.

DAVID A. PASSARO

MOTION TO COMPEL RECIPROCAL
DISCLOSURE (CIPA-6f)

Now comes Defendant, David A. Passaro, by and through counsel, and moves this Honorable Court, pursuant to the Classified Information Procedures Act (CIPA), and requests that the Court order the United States to provide him with the information it expects to use to rebut classified information ruled admissible by this Court's written order filed on June 26, 2006. Defendant requests that the Court place the United States under a continuing duty to disclose such rebuttal information, for the following reasons:

1. CIPA provides that after the Court makes a ruling respecting classified information, as the Court did recently, "the court shall . . . order the United States to provide the defendant with the information it expects to use to rebut the classified information." 18 U.S.C. App.3, § 6(f).

2. CIPA further provides that the Court "may place the United States under a continuing duty to disclose such rebuttal information." *Ibid.*

3. The remedy for failure to comply with this obligation is either exclusion of the evidence not disclosed, or prohibition of examination by the United States of any witness with respect to such information. *Ibid.*

4. Defendant has made every good faith effort to comply with his notice requirements under

CIPA. To the extent that Defendant has received discovery, he has notified the Court and government regarding his intent to disclose information that *may* be classified. Defendant has also recognized his continuing duty to make disclosures of intent to elicit classified information, if Jencks or exculpatory material, contain such information, when the United States fulfills its obligations to provide such material.

5. Fundamental fairness and the United States Constitution require that the government be held to the same standard of disclosure as Defendant. Judicial economy will best be served, as well, by the issue of such a CIPA-6(f) order.

Respectfully submitted this 17th day of July, 2006.

THOMAS P. McNAMARA
Federal Public Defender

/s/ Joseph B. Gilbert
JOSEPH B. GILBERT
Assistant Federal Public Defender
Attorney for Defendant
Office of the Federal Public Defender
150 Fayetteville Street Mall
Suite 450, Wachovia Capital Center
Raleigh, North Carolina 27601
Telephone: 919-856-4236
Fax: 919-856-4477
E-mail: Joseph_Gilbert@fd.org
N.C. State Bar No. 21395
LR 57.1 Counsel
Appointed

CERTIFICATE OF SERVICE

The undersigned certifies that service was made upon:

JAMES CANDELMO
Assistant United States Attorney
Suite 800, Federal Building
310 New Bern Avenue
Raleigh, NC 27601-1461

by electronically filing the foregoing with the Clerk of Court on 17 July, 2006, using the CM/ECF system which will send notification of such filing to the above.

Respectfully submitted this 17th day of July, 2006.

THOMAS P. McNAMARA
Federal Public Defender

/s/ Joseph B. Gilbert
JOSEPH B. GILBERT
Assistant Federal Public Defender
Attorney for Defendant
Office of the Federal Public Defender
150 Fayetteville Street Mall
Suite 450, Wachovia Capital Center
Raleigh, North Carolina 27601
Telephone: 919-856-4236
Fax: 919-856-4477
E-mail: Joseph_Gilbert@fd.org
N.C. State Bar No. 21395
LR 57.1 Counsel
Appointed